IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-090683 C-090684
Plaintiff-Appellee,	:	TRIAL NO. 09CRB-8847
vs.	:	
KEITH BALLARD,	:	*JUDGMENT ENTRY.*
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

In the early morning of March 21, 2009, Officers Joe Haugh and Rob Lonneman of the University of Cincinnati's police department responded to a 911 call about possible gunshots fired near a parking garage by University Hospital. Arriving at the scene, Haugh and Lonneman observed an individual who matched the general description of the possible suspect. This individual had his hands in his pockets and was facing away from the two officers. Officer Haugh drew his firearm and approached the suspect from the side, while Officer Lonneman approached from the rear. Haugh identified himself as a police officer and ordered the suspect to take his hands out of his pockets. The suspect, with his hands still in his pockets, turned toward Haugh. At that moment, from behind, Officer Lonneman placed the suspect in a bear hug and forced him to the ground. The suspect refused Haugh and

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Lonneman's repeated requests to allow the officers to handcuff him. Eventually the officers were able to handcuff the individual, who was later identified as the defendant-appellant, Keith Ballard.

Ballard was arrested on charges of criminal trespass, disorderly conduct, and resisting arrest. On September 15, 2009, after a bench trial before the Hamilton County Municipal Court, Ballard was found guilty of criminal trespass and resisting arrest. Pursuant to Crim.R. 29, the court granted Ballard's motion for an acquittal on the disorderly-conduct charge. The court sentenced Ballard to community-control supervision for one year, imposed a $100 fine and court costs for the resisting-arrest conviction, and imposed court costs for the criminal-trespass conviction. Ballard has timely appealed, asserting three assignments of error.

In his first assignment of error, Ballard argues that he was denied effective assistance of counsel. Specifically, Ballard asserts that his attorney fell below an objective standard of reasonableness when she failed to introduce evidence to corroborate Ballard's testimony regarding medical treatment and his medical condition. Ballard also argues that his attorney failed to pursue an insanity defense, even though Ballard had previously gone to University Hospital's psychiatric ward and was there on the date of the incident.

To show ineffective assistance of counsel, a defendant must prove that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense.[2] Deficient performance requires a showing, under all the circumstances, that counsel's representation fell below an objective standard of reasonableness.[3] To prove prejudice, the defendant must show that there was a reasonable probability

[2] *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052.
[3] Id.

that, but for counsel's unprofessional errors, the outcome of the case would have been different.[4]

Ballard's claim of ineffective assistance fails under the first prong of the *Strickland* test. Ballard simply has not demonstrated that his attorney's performance was deficient. The record reveals that his attorney reasonably sought to demonstrate that Ballard was not on University Hospital grounds when he was apprehended and, therefore, that he could not be convicted of criminal trespass. She further sought to demonstrate that Ballard had a legitimate medical reason for previously being on hospital grounds. In addition, Ballard's attorney moved for a Crim.R. 29 acquittal on each charge, and the court granted Ballard's motion with regard to the disorderly-conduct charge.

Additionally, the state does not dispute that Ballard may have been at the hospital earlier in the evening. There was uncontradicted testimony presented at trial that Ballard had been at the hospital earlier in the evening, around 8:00 p.m. And that testimony indicated that Ballard had received treatment not for any psychological condition, but for physical problems relating to a hernia surgery that had been performed in March 2009. Because he was at the hospital for physical rather than psychological treatment, we cannot say that Ballard's attorney was deficient when she did not pursue an insanity defense.

Further, Officers Haugh and Lonneman did not begin their shift until 10:00 p.m. Officer Haugh testified that, prior to the incident near the parking garage, he and Officer Lonneman had earlier escorted Ballard off hospital property twice in the same shift. Therefore, any medical records that might have been obtained would

[4] Id.

have simply shown that, at one time during the evening, Ballard had a legitimate reason to be at the hospital. Testimony revealed that, after his treatment, Ballard had refused to leave the hospital and was escorted from the property because of aggressive panhandling. Because the state did not dispute that Ballard was entitled to be at the hospital earlier in the evening, we cannot say that Ballard's attorney's performance fell below an objective standard of reasonableness. And because Ballard has not demonstrated any deficiency in counsel's performance, we do not address the issue of prejudice under the second prong of *Strickland*. Ballard's first assignment of error is overruled.

In his second assignment of error, Ballard argues that his convictions were not supported by sufficient evidence, and in his third assignment of error, he argues that his convictions were contrary to the manifest weight of the evidence. Specifically, Ballard asserts that there was a failure to show that he was on hospital property at the time of his arrest, and that the record otherwise reflects that he had a privilege to be on hospital property earlier in the evening, and that he could not have resisted arrest because he was not informed that he was under arrest.

"The test [for the sufficiency of the evidence] is whether after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt."[5] And even if a reviewing court determines that a conviction is sustained by sufficient evidence, the judgment may still be against the manifest weight of the evidence. When examining the manifest weight of evidence, a reviewing court "review[s] the entire record,

[5] *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered."[6]

After a thorough review of the record, we overrule Ballard's second and third assignments of error. In addition to the evidence we have previously discussed, testimony from the officers revealed that, contrary to Ballard's testimony, Ballard was apprehended inside the hospital's parking garage. Testimony also revealed that even after the officers had identified themselves to him, Ballard refused to comply with the officers' orders to surrender his arms to be handcuffed. Moreover, even though Ballard had been at the hospital earlier in the evening for legitimate medical reasons, he refused to leave after his treatment and was twice escorted from hospital property before being arrested. Considering all of this, we conclude that the evidence, when viewed in the light most favorable to the prosecution, was sufficient to support Ballard's convictions, and that the trier of fact did not lose its way when it found him guilty.

We find no merit in any of Ballard's three assignments of error. The judgment of the trial court is affirmed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 2, 2010

per order of the Court _____.

Presiding Judge

[6] *State v. Thompkins* (1977), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.